

NOTE: CHANGES HAVE BEEN
MADE TO THIS DOCUMENT

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
SOUTHERN DIVISION**

CRAFTWOOD II, INC., a California
corporation, d/b/a as Bay Hardware,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

TOMY INTERNATIONAL, INC., *etc.*,
et al.,

Defendants.

Case No. SACV12-1710 DOC (ANx)

CLASS ACTION

**Order Preliminarily Approving Class
Action Settlement [126]**

THIS MATTER, having come on before the Court on the motion of plaintiff
Craftwood II, Inc. d/b/a Bay Hardware (“Plaintiff”), requesting preliminary approval
of a settlement of this class action litigation (the “Litigation”) with defendants
TOMY International, Inc. (f/k/a RC2 Corporation) (“TOMY”), John Deere Shared
Services, Inc., and CNH Industrial America LLC (f/k/a CNH America LLC)

1 (collectively “Defendants”), in accordance with a Settlement Agreement made
2 between them which, together with the exhibits annexed thereto (collectively, the
3 “Settlement Agreement,” a copy of which was made a part of Plaintiff’s motion for
4 preliminary approval), setting forth the terms and conditions for the proposed
5 settlement, and the Court having heard argument of counsel and being otherwise
6 fully advised in the premises, the Court hereby finds that:

7
8 (a) The settlement proposed in the Settlement Agreement has been
9 negotiated at arms’ length and is not collusive, and is preliminarily determined to be
10 fair, reasonable, adequate, and in the best interests of the proposed Settlement Class
11 (as defined below);

12
13 (b) With respect to the proposed Settlement Class, this Court
14 preliminarily finds, solely for purposes of effectuating the proposed settlement, that
15 class certification is appropriate; and

16
17 (c) Notice of Proposed Settlement and Claim Form attached
18 respectively as Exhibits 4 and 5 to the Declaration of Scott Z. Zimmermann
19 submitted in connection with this Motion (“Zimmermann Declaration”) and the
20 method of providing such notice to the proposed Settlement Class (as described and
21 defined as “Class Notice” in Settlement Agreement ¶ 15), comply with Fed. R. Civ.
22 P. 23(e) and due process, constitute the best notice practicable under the
23 circumstances, and provide due and sufficient notice to all persons entitled to notice
24 of the settlement of this Litigation.

25
26 **IT IS THEREFORE ORDERED THAT:**

- 27
28 1. The settlement proposed in the Settlement Agreement is preliminarily

1 determined to be fair, reasonable, adequate, and in the best interests of the
2 Settlement Class. The settlement is therefore preliminarily approved, subject to
3 further consideration at the Final Settlement Hearing described below.
4

5 2. For purposes of effectuating the settlement only, the following class
6 (the "Settlement Class") is conditionally certified:

7 All persons and entities to whose facsimile telephone
8 number(s) TOMY sent, during the period August 14,
9 2008, to August 30, 2012, one or more Facsimile
10 Advertisements (as defined in the Settlement Agreement)
11 that promoted its goods, Deere brand-licensed products
12 sold by TOMY, or Case-, Case IH- or New Holland
13 brand-licensed products sold by TOMY.

14 3. Craftwood II, Inc., is designated and appointed representative of the
15 Settlement Class.

16 4. Scott Z. Zimmermann of the Law Offices of Scott Z. Zimmermann and
17 C. Darryl Cordero of Payne & Fears LLP are designated and appointed as
18 Settlement Class Counsel.

19 5. Kurtzman Carson Consultants is designated and appointed as the
20 Claims Administrator under the Settlement Agreement.
21

22 6. The Notice to the Settlement Class members and Claim Form attached
23 respectively as Exhibits 4 and 5 to the Zimmermann Declaration are approved.
24

25 7. On or before October 3, 2014 the Notice the Settlement Class members
26 and Claim Form, in the forms attached respectively as Exhibits 4 and 5 to the
27 Zimmermann Declaration shall be sent by the Claims Administrator to all putative
28

1 Settlement Class members in accordance with the Settlement Agreement. This
2 Class Notice complies with Fed. R. Civ. P. 23(e) and due process, constitutes the
3 best notice practicable under the circumstances, and is sufficient notice to all
4 persons entitled to notice of the settlement of this Litigation.

5
6 8. The provisions for claim submission, claims determinations, or to cure
7 defects in claims, as well as for submission and determinations of Substitute Forms
8 W-9, are set forth in the Settlement Agreement and shall be followed in
9 administering claims.

10
11 9. The deadline for submission of Claim Forms by Settlement Class
12 Members to the Claims Administrator shall be December 9, 2014 (the "Claims
13 Submission Date").

14
15 10. A hearing to determine whether the settlement should be given final
16 approval, and to determine the "Motion for Fees" and "Motion for Incentive Award"
17 (as defined in paragraphs 6.A and 6.C respectively of the Settlement Agreement)
18 (the "Final Approval Hearing"), will be conducted on February 23, 2015, at 8:30
19 a.m. in Courtroom 9D of this Court.

20
21 11. Members of the Settlement Class may request exclusion from the
22 Settlement Class as provided in the Settlement Agreement. Any request for
23 exclusion which does not comply with the requirements as set forth in the
24 Settlement Agreement shall be ineffective. Any request for exclusion shall be
25 submitted to the Claims Administrator and must be received by the Administrator on
26 or before December 9, 2014 or the request shall be deemed to be invalid. The
27 Claims Administrator shall file documents with the Court reporting on the
28 Settlement Class members requesting exclusion no later than five business days

1 after the Claims Submission Deadline (as defined paragraph 7 of the Settlement
2 Agreement).

3
4 12. Members of the Settlement Class shall have the right to object to the
5 proposed settlement, the “Motion for Fees” and the “Motion for Incentive Award.”
6 No Settlement Class member shall be heard, and no papers, briefs, pleadings, or
7 other documents submitted by any Settlement Class member shall be received and
8 considered by the Court unless, no later than February 2, 2015, the Settlement Class
9 member files with the Clerk of Court and concurrently personally serves or mails to
10 addresses of Settlement Class Counsel specified in the Notice to the Settlement
11 Class, written objections and if the objector intends to appear at the Final Approval
12 Hearing, a notice of intention to appear that conform to the requirements as set forth
13 in the Notice to the Settlement Class and in the Settlement Agreement. Plaintiff and
14 Defendants shall file their written responses to timely-filed objections, if any, no
15 later than February 13, 2015. There shall be no replies.

16
17 13. Settlement Class Counsel and/or Plaintiff shall file a Motion for Final
18 Approval and a “Motion for Fees” and a “Motion for Incentive Award” (as those
19 terms are defined in paragraphs 6.A and 6.C, respectively, of the Settlement
20 Agreement) no later than January 16, 2015.

21
22 14. All proceedings in this litigation, other than such proceedings as may
23 be necessary to carry out the terms and conditions of the Settlement Agreement, and
24 this Order, are hereby stayed and suspended until further order of this Court.

25
26 15. In aid of the Court’s jurisdiction to implement and enforce the proposed
27 settlement, Plaintiff and all Settlement Class members shall be preliminarily
28 enjoined, during the period from the entry of the Preliminary Approval Order to the

1 date of the Final Approval Hearing, from commencing or prosecuting any action
2 asserting any of the claims and causes of action to be released under the Settlement
3 Agreement, either directly, representatively, derivatively, or in any other capacity,
4 whether by a complaint, counterclaim, defense, or otherwise, in any local, state, or
5 federal court, or in any agency or other authority or forum wherever located. Any
6 person or entity that knowingly violates the injunction shall pay the costs and
7 attorneys' fees incurred by Defendants or any other party to be released the
8 Settlement Agreement as a result of the violation. Nothing in this paragraph shall be
9 construed to prevent a Settlement Class member from presenting objections to the
10 Court regarding the Settlement Agreement, "Motion for Fees" or "Motion for
11 Incentive Award" in accordance with paragraph 12 of this Order.

12
13 16. If the settlement proposed in the Settlement Agreement, this Order and
14 the Judgment and Order contemplated by the Settlement Agreement do not receive
15 full and final judicial approval in all material respects, or are reversed, vacated, or
16 modified in any material respect, then neither the Settlement Agreement, this Order
17 nor the contemplated Final Judgment and Order shall have any force or effect; the
18 Parties shall be restored, without waiver, to their respective positions as of June 6,
19 2014; any certification of the Settlement Class shall be vacated; the Litigation shall
20 proceed as though the Settlement Class had never been certified; Plaintiff shall have
21 the right to move for class certification and Defendants shall have the right to
22 oppose certification; any amounts paid by TOMY into the Settlement Escrow
23 Account shall be returned to TOMY less any payments made for class notice and
24 administrative costs including any escrow account fee shall be returned to TOMY;
25 and paragraphs 5.C, 27 and 28 of the Settlement Agreement shall survive and
26 remain enforceable.

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28 17. The Court may extend any of the deadlines set forth in this Order or

1 adjourn or continue the Final Settlement Hearing without further notice to the
2 Settlement Class.

3
4 **18. The Final Pretrial Conference currently scheduled for December 1,**
5 **2014 and the Jury Trial date currently scheduled on December 16, 2014 are**
6 **vacated.**

7
8 Dated: September 8, 2014

David O. Carter

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Hon. David O. Carter
United States District Court Judge